

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDY LANCE BRAUN,

Petitioner,

Case No. 1:17-cv-1129

v.

HON. JANET T. NEFF

CARMEN PALMER,

Respondent.

OPINION AND ORDER

This is a habeas corpus petition filed pursuant to 28 U.S.C. § 2254. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R) recommending that this Court deny the petition as “meritless.” The matter is presently before the Court on Petitioner’s objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order. The Court will also issue a Judgment in this § 2254 proceeding. *See Gillis v. United States*, 729 F.3d 641, 643 (6th Cir. 2013) (requiring a separate judgment in habeas proceedings).

Petitioner’s first three objections relate to the Magistrate Judge’s alleged misclassification of Juror Sare as a “biased” juror (ECF No. 22 at PageID.1581-1585). Petitioner argues that he set forth in his petition that both Juror Henderson and Juror Sare were “incapable of being impartial,” but that he never claimed that Juror Sare was “biased” (*id.* at PageID.1582-1583). However, these terms are essentially synonymous in this case. *See also Miller v. Webb*, 385 F.3d 666, 673 (6th

Cir. 2004) (“Actual bias is ‘bias in fact’—the existence of a state of mind that leads to an inference that the person will not act with entire impartiality.”) (internal quotations omitted). The Magistrate Judge conducted a proper analysis addressing Petitioner’s arguments that both jurors were incapable of being impartial and concluded that Petitioner failed to meet his burden of proof (ECF No. 18 at PageID.1567). Petitioner has not demonstrated any factual or legal error in the Magistrate Judge’s analysis or conclusion. The objections are therefore denied.

In his last objection, Petitioner argues that the Magistrate Judge erred by assuming that Petitioner’s claims were defaulted (ECF No. 22 at PageID.1585-1586). However, other than his conclusory statement, Petitioner fails to address any portion of the Report and Recommendation (*id.*). Petitioner’s general statement of disagreement does not adequately identify his issues of contention with the Report and Recommendation and does not provide a proper basis for review by this Court. *See Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (“The parties have ‘the duty to pinpoint those portions of the magistrate’s report that the district court must specially consider.’”) (citation omitted); *Miller v. Curie*, 50 F.3d 373, 380 (6th Cir. 1995) (“objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious”). This objection is therefore also denied.

Having determined Petitioner’s objections are properly denied, the Court must further determine pursuant to 28 U.S.C. § 2253(c) whether to grant a certificate of appealability as to the issues raised. *See RULES GOVERNING § 2254 CASES*, Rule 11 (requiring the district court to “issue or deny a certificate of appealability when it enters a final order”). The Court must review the issues individually. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Murphy v. Ohio*, 263 F.3d 466, 466-67 (6th Cir. 2001). Upon review under the applicable standards, the Magistrate Judge recommended that a certificate of appealability be denied (R&R, ECF No. 18 at PageID.1568).

This Court concurs with that recommendation and concludes that reasonable jurists would not find the Court's assessment of Petitioner's issues debatable or wrong. A certificate of appealability will therefore be denied. Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 22) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 18) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the petition for habeas corpus relief (ECF No. 1) is DENIED for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that a certificate of appealability pursuant to 28 U.S.C. § 2253(c) is DENIED as to each issue asserted.

Dated: April 16, 2020

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge